ORDINANCE NO. 6
Series 1973

AN ORDINANCE GRANTING TO THE CALIFORNIA-PACIFIC UTILITIES COMPANY, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND CONSTRUCT, AND TO THEREAFTER OPERATE AND MAINTAIN, REPAIR AND REPLACE A SYSTEM OF CONDUITS AND PIPE LINES FOR THE TRANSMISSION, DISTRIBUTION, AND SALE OF GAS TO THE PUBLIC, TOGETHER WITH SUCH FIXTURES OR APPURTENANCES AS THE GRANTEE MAY DEEM NECESSARY OR CONVENIENT THEREWITH, IN, UNDER, ALONG, OR ACROSS THE STREETS, HIGHWAYS OR OTHER PUBLIC WAYS IN THE CITY OF ELGIN, COUNTY OF UNION, STATE OF OREGON, FOR A TERM OF TWENTY (20) YEARS, AND DEFINING THE TERMS AND CONDITIONS OF SUCH FRANCHISE.

THE COMMON COUNCIL AND THE PEOPLE OF
THE CITY OF ELGIN DOES ORDAIN AS FOLLOWS:

Section 1. There is hereby granted to California-Pacific Utilities Company, a California corporation, its successors and assigns, hereinafter called "Grantee", the right, privilege and franchise to lay and construct, and to thereafter operate, and maintain, repair and/or replace system of conduits and pipe lines, together with such fixtures and appurtenances as the grantee may deem necessary or convenient in connection therewith, in, under, along, or across all streets, highways, and/or alleys, or other public ways, all hereinafter called "Premises" in the City of Elgin, County of Union, State of Oregon, hereinafter called "City", for the purpose of transmitting and/or distributing gas to the public for light, heat, fuel, power, or any other lawful purpose, for a term of twenty (20) years from and after the effective date of this ordinance, all such installations, if practicable, to be laid in the alleys of the City that are open.

Section 2. The system of conduits, pipe lines, and other fixtures or appurtenances installed by grantee shall be laid or installed so that the top of said pipes shall be at a depth of not less than eighteen (18) inches below the established or official grade of the premises, provided, however, that in cases where grades have not been established, such pipes shall be laid at the depth of not less than thirty (30) inches below the existing surface of the premises; and provided further, that the City hereby reserves to itself the right to change or establish the grade of any of said premises, and to require the grantee to lay or relay any of the said pipes or other equipment laid therein, to the proper depth, so that the same when so laid, shall conform to such grade or grades as changed or established. All pipes laid and the operations of grantee shall also be in conformity with the rules and regulations of all duly constituted authorities having jurisdiction of the matter.

Section 3. It is especially understood and agreed that the City of Elgin has already laid and will continue to lay, in said premises, water mains and sewer mains, and may, during the life of this franchise, desire to lay and maintain pipes and other apparatus for other municipal projects. Upon notification by the City, the grantee will change the location of its pipe lines to conform with the necessary location or relocation of the main pipe lines of the city's municipal water, or sewer system, or other public works; and the City agrees, on its behalf, that in making any new location or relocation of such works, it will, so far as the public interest justifies, take into consideration the location of the grantee's system as established or platted and filed with the City.

Section 4. It shall be lawful for and the right is hereby granted to the said grantee to make all needful excavation in any of said premises for the purpose of laying down, maintaining, repairing,

replacing and/or operating its conduits, pipe lines, or other fixtures or appurtenances installed for the purpose aforesaid.

Section 5. Whenever the said grantee shall disturb any of the streets, alleys, avenues, roads, highways, thoroughfares, parkings, bridges, and sidewalks or either, of said City, for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable and without any unnecessary delay, at the cost and expense of grantee; and on failure to do so, the City shall have the right to fix a reasonable time within which such installation, replacement, or restoration shall be completed, not exceeding 30 days, nor less than 5 days; and upon the failure of the grantee to make such installation, replacement, or restoration, the City shall cause the same to be made at the expense of the grantee, and any expense thus incurred shall be a lien upon the property and apparatus of the said company, located within the City and shall be entered in the city lien docket, and be enforced in the same manner as city liens are enforced by the grading or otherwise improving of streets; provided, however, that no excavation or part of any excavation made for the purpose of laying pipes or other apparatus or repair of same, under this franchise, in the main public streets or highways shall be permitted to remain open longer than five days after the excavation is made, nor made without first notifying the City, and provided further that all excavations provided for herein shall be filled up and the premises shall be restored fully and in every respect to their former condition. The City shall give prompt notice to the grantee of its failure to make proper restoration or repairs as herein provided.

Section 6. For the mutual convenience of the parties, and to assist the City in keeping and maintaining its records of pipes and other apparatus underground within the city limits, and in making its

plans for the location, extension, or relocation of any mains used by it, grantee shall, prior to the commencement of the construction of its distribution system, present to the City a map showing the proposed location, size, and depth of the pipes and mains in the premises, which locations shall be at once examined by the City or its authorized agent, and the map, upon approval, filed with the City Recorder. Such map may be for the whole city or for any district or portion thereof in which it is immediately proposed to carry on construction work. No work except emergency repairs shall be undertaken by the grantee until it has complied with the provisions of this section of the franchise.

Section 7. Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from sewering, grading, paving, planking, replacing, repairing, or otherwise altering any of the premises; but all such work shall be done, if practicable, so as not to obstruct, impair, or prevent the free use of said pipes or other apparatus of the grantee, and the installation of the works of the grantee shall in no way obstruct, impair, or prevent the free use of any underground works previously installed by any other franchise holder.

Section 8. In consideration of the privilege and franchise granted by this ordinance, the grantee shall assume all liability and risk for damage to persons or property which may arise from construction, repair, or operation of any or all of its plants or appliances connected therewith and from the excavation of any of the premises, and the installation, maintenance, and use of any pipe mains or conduits pursuant to the provisions of this franchise, and shall save the City harmless from and indemnify the City against any and all liabilities, claims, action, suits, loss, expenses, or damage that may arise or be incurred therefrom and the operation and maintenance thereof. The grantee shall provide and keep in force

and effect policies of liability insurance to effectuate said purposes.

Section 9. The grantee herein covenants and agrees with the City that in consideration of the granting to it of the rights and privileges embraced in this ordinance, it will pay to the City, three per cent (3%) of the gross annual revenues derived from service to its patrons hereafter located within the City; said percentage shall be paid in quarterly installments no later than sixty (60) days after the end of the period covered by the payment, and that it will furnish the City at the end of each such period, a verified statement of its said gross earnings, and that it will allow the inspection of its books in La Grande at all reasonable hours upon demand of the City. Except as otherwise provided herein, "gross revenues" shall mean revenues received from operations within the City less net uncollectibles. Gross revenues shall include revenues from the use, rental or lease of operating facilities other than residential space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities or stocks, sales at wholesale to another utility when the utility purchasing the service is not the ultimate consumer, revenue paid directly by the United States of America or any of its agencies or revenues paid by the City.

Section 10. The City does hereby designate, as provided by statute, the Public Utilities Commissioner of the State of Oregon, who shall have power on behalf of the City to determine what rates, charges, and fees for compensation made, charged, or demanded by said corporation, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, and to fix those which are just, reasonable, and sufficient; the City reserving unto itself any and

all rights which it now has or may hereafter be granted by the statutes of the State of Oregon for the designation of any person, commission, or other entity, to represent it and the people of the City in determining the fairness and reasonableness of any and all rates of the Company.

Section 11. The rights, privileges, and franchises hereby granted to said grantee shall continue and be in full force and effect for the full period of twenty (20) years from and after the taking effect, including acceptance hereof, and are hereby granted subject to all the terms, conditions, and restrictions of the charter of the City now in effect, except so far as such terms may be modified or superseded by the Constitution or Laws of the State of Oregon, or of the United States.

Section 12. This ordinance shall be inoperative unless accepted in writing by the grantee, and filed with the City Recorder within thirty (30) days after passage of this ordinance.

PASSED BY THE COMMON COUNCIL THIS 18 DAY OF September ,1973.

APPROVED BY THE MAYOR THIS 18 DAY OF September ,1973.

Wayne L. Stein
MAYOR

ATTEST:

Ronald D. Scoubes
CITY RECORDER

ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, CALIFORNIA-PACIFIC UTILITIES COMPANY, a California corporation, duly qualified to transact a public utility business in the State of Oregon, does hereby accept in writing all of the terms and conditions of Ordinance No. 7 of the City of Elgin duly passed by the City Council of the City of Elgin on September 18, 1973, granting to the undersigned the right, privilege and franchise to operate throughout the City of Elgin as a public utility and to use the streets, alleys, avenues and public highways within the corporate limits of the City of Elgin to conduct its operations as a gas public utility.

CALIFORNIA-PCIFIC UTILITIES COMPANY

By E. S. Rasmussen

Vice President & Division Manager

Dated:

Received for Recordation

October 5, 1973

Lou Scoubes Recorder

CITY OF ELGIN